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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on extrajudicial, summary or arbitrary executions prepared by Mr. Bacre Waly Ndiaye, Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 19 of Commission resolution 1996/74 of 23 April 1996 and Economic and Social Council decision 1996/279 of 24 July 1996.

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ANNEX

Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions

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I. INTRODUCTION

1. The present report is the first report to be submitted to the General Assembly since the mandate on summary and arbitrary executions was established by the Economic and Social Council in its resolution 1982/35 of 7 May 1982. The report is presented by the Special Rapporteur, Mr. Bacre Waly Ndiaye, who has thus far presented four annual reports to the Commission on Human Rights.

2. The present report is submitted pursuant to Commission on Human Rights resolution 1996/74 of 23 April 1996 on extrajudicial, summary or arbitrary executions. In that resolution, the Commission invited the Special Rapporteur to submit an interim report to the General Assembly at its fifty-first session on the situation worldwide in regard to summary or arbitrary executions and his recommendations for more effective action to combat that phenomenon.

3. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Ndiaye, took over the mandate when the previous Special Rapporteur, Mr. S. Amos Wako, resigned. Mr. Wako had been Special Rapporteur from the establishment of the mandate in 1982 until March 1992. Mr. Ndiaye was appointed in April 1992 by the Chairman of the Commission on Human Rights, pursuant to Commission resolution 1992/72 of 5 March 1992, which was approved by the Economic and Social Council in its decision 1992/242 of 20 July 1992.

A. Structure of the report

4. The report covers the period from 20 July 1992 through 1 September 1996, the time during which the present Special Rapporteur has been in office. The period from 1982 to 1992, is summarized in paragraphs 5 to 9 below. In chapter II, the Special Rapporteur offers an interpretation of the mandate entrusted to him and the legal framework within which it has been implemented. Chapter III covers the methods of work and activities undertaken since 1992. In chapter IV, the various situations involving violations of the right to life are discussed. In chapter V, the Special Rapporteur presents an account of issues requiring his special attention. Issues of special concern are reported on in chapter VI. Finally, chapter VII contains the Special Rapporteur's concluding remarks and recommendations designed to ensure a more effective respect for the right to life.

B. History of the mandate

5. The subject of summary or arbitrary executions had been discussed in the United Nations for many years within the framework of a wider discussion on human rights. The Subcommission on Prevention of Discrimination and Protection of Minorities had for a long time reported on this subject under the item entitled "Disappearances and summary executions". Over the years, the Subcommission's reports revealed increasing instances of alleged summary executions. The Commission on Human Rights, in its resolution 20 (XXXVI), of 29 February 1980, established the Working Group on Enforced or Involuntary

Disappearances. The creation of that Group, in addition to other developments, led to the establishment of the mandate on summary and arbitrary executions.

6. The Commission on Human Rights, by its resolution 1982/29 of 11 March 1982, recommended that the Economic and Social Council request the Chairman of the Commission to appoint an individual of recognized international standing as special rapporteur to submit a comprehensive report to the Commission at its thirty-ninth session on the occurrence and extent of the practice of summary or arbitrary executions, together with his conclusions and recommendations. This resolution was subsequently adopted by the Economic and Social Council as resolution 1982/35 and established the mandate of the Special Rapporteur.

7. The mandate of the Special Rapporteur has been regularly renewed by the Economic and Social Council. The Special Rapporteur has examined the issue from various aspects with a view to presenting a comprehensive picture of the phenomenon of summary or arbitrary executions in the contemporary world.

8. The Commission on Human Rights, in its resolution 1992/72, renewed the mandate of the Special Rapporteur and extended it for another three years. This resolution was approved by the Economic and Social Council in its decision 1992/242. It should be noted that in its resolution, the Commission widened the title of the mandate to include "extrajudicial" as well as "summary or arbitrary" executions. This change indicates that the members of the Commission have adopted a broader approach to the mandate on executions to include all violations of the right to life as guaranteed by a large number of international human rights instruments.

9. After having presented his ninth report 1/ to the Commission on Human Rights, Mr. Wako resigned as Special Rapporteur in early March 1992 and Mr. Ndiaye took over the mandate on 20 July 1992.

II. THE MANDATE

A. Terms of reference

10. As it had in previous years, the Commission on Human Rights, in its resolution 1996/74, requested the Special Rapporteur, in carrying out his mandate:

(a) To continue to examine situations of extrajudicial, summary or arbitrary executions and to submit on an annual basis his findings, together with conclusions and recommendations, to the Commission on Human Rights, as well as such other reports as the Special Rapporteur deems necessary in order to keep the Commission informed about such serious situations of extrajudicial, summary or arbitrary executions that warrant its immediate attention;

(b) To respond effectively to information that comes before him, in particular when an extrajudicial, summary or arbitrary execution is imminent or threatened or when such an execution has occurred;

(c) To enhance further his dialogue with Governments, as well as to follow up on recommendations made in reports after visits to particular countries;

(d) To continue to pay special attention to extrajudicial, summary or arbitrary executions of children and women and to allegations concerning violations of the right to life in the context of violence against participants in demonstrations and other peaceful public manifestations or against persons belonging to minorities;

(e) To pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals who are carrying out peaceful activities in defence of human rights and fundamental freedoms;

(f) To continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto;

(g) To apply a gender perspective in his work.

11. In other resolutions adopted by the Commission on Human Rights at its fifty-second session, special rapporteurs were requested to pay particular attention to certain issues within the framework of their mandates. Those resolutions include the following: 1996/20 on the rights of persons belonging to national or ethnic, religious and linguistic minorities; 1996/32 on human rights in the administration of justice, in particular of children and juveniles in detention; 1996/47 on human rights and terrorism; 1996/48 on the question of integrating the human rights of women throughout the United Nations system; 1996/49 on the elimination of violence against women; 1996/51 on human rights and mass exoduses; 1996/52 on internally displaced persons; 1996/53 on the right to freedom of opinion and expression; 1996/55 on advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights; 1996/70 on cooperation with representatives of United Nations human rights bodies; 1996/78 on the comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action; 1996/85 on the rights of the child.

12. In implementing his mandate, the Special Rapporteur takes into account the requests made by the Commission on Human Rights in the above-mentioned resolutions, particularly when evaluating and analysing information he receives.

B. Violations of the right to life: action taken by the Special Rapporteur

13. Since the creation of the mandate in 1982, action has been taken in a variety of situations by the Special Rapporteurs in charge of the mandate. During the period under consideration, the Special Rapporteur has taken and continues to take action in the following cases:

(a) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial, or in case of a breach of the right to appeal or the right to seek pardon or commutation of sentence. He also intervenes if the convicted is a minor, a mentally retarded or insane person, a pregnant woman or a recent mother;

(b) Death threats and fear of imminent extrajudicial executions by state officials, paramilitary groups, private individuals or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above;

(c) Deaths in custody owing to torture, neglect or the use of force, or life-threatening conditions of detention;

(d) Deaths owing to the use of force by law enforcement officials, or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;

(e) Deaths owing to attacks by security forces of the State, by paramilitary groups, death squads or other private forces cooperating with or tolerated by the Government;

(f) Violations of the right to life during armed conflicts, especially of the civilian population, contrary to humanitarian law;

(g) Expulsion or refoulement of persons to a country where their lives are in danger;

(h) Genocide;

(i) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;

(j) Breach of the obligation to provide adequate compensation to victims of violations of the right to life.

C. Legal framework

14. The Special Rapporteur is guided primarily by international legal standards. The main substantive legal framework, as indicated by the Commission on Human Rights, in its resolution 1992/72, and the General Assembly, in its resolution 45/162 of 18 December 1990, comprises the Universal Declaration of Human Rights and articles 6, 14 and 15 of the International Covenant on Civil and Political Rights. These standards, which are universal, are interpreted within the context of other United Nations instruments, enumerated in the sixth preambular paragraph of Commission resolution 1992/72.

15. The right to life finds its most general recognition in article 3 of the Universal Declaration of Human Rights. Article 6 of the International Covenant

on Civil and Political Rights recognizes the inherent right of every person to life, adding that this right "shall be protected by law" and that "no one shall be arbitrarily deprived of life". The right to life of persons under the age of 18 and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically recognized in article 6 of the Convention on the Rights of the Child.

16. In accordance with article 2 of the Universal Declaration of Human Rights and articles 2 and 26 of the International Covenant on Civil and Political Rights, and pursuant to several other United Nations declarations and conventions, everyone is entitled to the protection of the right to life without distinction or discrimination of any kind, and all persons shall be guaranteed equal and effective access to remedies for the violation of this right.

17. Moreover, article 4, paragraph 2, of the International Covenant on Civil and Political Rights provides that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any derogation from the right to life and security of the person.

18. The general recognition of the right to life of every person in the aforementioned international instruments constitutes the legal basis for the work of the Special Rapporteur. Various other treaties, resolutions, conventions and declarations adopted by competent United Nations bodies contain provisions relating to specific types of violations of the right to life. They, too, form part of the legal framework within which the Special Rapporteur operates. 2/

19. One of the most pertinent of these instruments is the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council in its resolution 1989/65 of 24 May 1989. Principle 4 sets forth the obligation of Governments to guarantee effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

20. The situations of extrajudicial, summary or arbitrary executions that the Special Rapporteur is requested to investigate comprise a variety of cases. All acts and omissions of state representatives that constitute a violation of the general recognition of the right to life embodied in the Universal Declaration of Human Rights (article 3) and the International Covenant on Civil and Political Rights (article 6 and, also, articles 2, 4, para. 2, 26 and, in particular with regard to the death penalty, articles 14 and 15), as well as a number of other treaties, resolutions, conventions and declarations adopted by competent United Nations bodies, fall within his mandate.

III. METHODS OF WORK AND ACTIVITIES SINCE 1992

A. Communications

21. The Special Rapporteur discharges his mandate mainly on the basis of information brought to his attention by non-governmental organizations, Governments, individuals and intergovernmental organizations. These communications contain specific cases of alleged extrajudicial, summary or arbitrary executions, or death threats, and/or general information about questions related to the right to life.

22. While many of the organizations and individuals providing allegations are well known to the Special Rapporteur and other United Nations human rights officials as sources of credible information, sometimes allegations are received from less well-known or entirely new sources. The main criteria applied by the Special Rapporteur in his evaluation of such allegations are the degree of detail they contain concerning the victims and the precise circumstances of the given incident. Where doubt persists, the Special Rapporteur will continue to seek corroboration of these allegations from other sources of undisputed credibility. The way in which the sources of allegations respond to the Special Rapporteur's requests for comments on the contents of government replies and/or for additional details to clarify the cases they submitted will provide the Special Rapporteur with a basis for assessing the reliability of the sources. Where there are no serious grounds to believe that the information provided by the source is not credible, the Special Rapporteur transmits the allegations to the Governments concerned, either in the form of an urgent appeal or a letter.

23. The limited staff available to the Special Rapporteur does not allow him to take an active approach and to seek contact with possible local or national sources of information in cases where, for example, violations of the right to life are reported by the media but allegations have not been submitted to the Special Rapporteur. The availability of information on any country clearly depends on the degree of freedom granted by Governments to human rights activists, as well as on the latter's level of organization. As a consequence, the Special Rapporteur continues to find himself in a situation where, for some countries, the information brought to his attention is very complete, while other countries simply do not figure in his report because no information has been received, or the communications brought to his attention are not sufficiently specific to allow them to be processed within the framework of his mandate. Therefore, allegations transmitted by the Special Rapporteur are only approximately indicative of the occurrence of violations of the right to life worldwide.

B. Urgent appeals

24. Urgent transmissions were made by the Special Rapporteur in cases that evinced a fear of imminent extrajudicial, summary or arbitrary executions; these cases included death threats and fear of imminent execution of death sentences in contravention of the limitations on capital punishment set forth in the pertinent international instruments. This fear is sometimes based on alleged violations of the right to life that have already been committed. The Special

Rapporteur also sent urgent appeals to Governments after having been informed of the imminent expulsion of persons to a country where they are at risk of extrajudicial, summary or arbitrary execution.

25. The aim of urgent appeals is the prevention of loss of life. Consequently, the Special Rapporteur transmits allegations of imminent extrajudicial, summary or arbitrary executions regardless of whether domestic remedies have been exhausted.

26. During the period under review, the Special Rapporteur transmitted 818 urgent appeals on behalf of more than 6,500 persons, as well as on behalf of members of certain families, various indigenous communities, groups of refugees, internally displaced persons and the civilian population in various conflict areas.

27. Urgent appeals were transmitted to the following 91 countries: Afghanistan, Algeria, Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bosnia and Herzegovina, Brazil, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Cuba, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Gabon, Georgia, Germany, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jamaica, Jordan, Kazakstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Libyan Arab Jamahiriya, Malawi, Malaysia, Mexico, Morocco, Myanmar, Nepal, Netherlands, Nicaragua, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Russian Federation, Rwanda, Saudi Arabia, Sierra Leone, Singapore, South Africa, Sri Lanka, Sudan, Swaziland, Sweden, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uzbekistan, Venezuela, Viet Nam, Yemen and Zaire. In addition, an urgent appeal was transmitted to the Palestinian Authority.

Table 1

Urgent appeals transmitted to Governments since 1992

Year	Number of urgent appeals	Number of Governments
1992	143	43
1993	217	52
1994	151	53
1995	203	41
1996 a/	104	34

a/ Up to 1 September 1996.

28. The Special Rapporteur transmitted urgent appeals on behalf of more than 100 identified individuals to the Governments of Brazil, Colombia, Guatemala, Peru and South Africa, and on behalf of more than 50 identified individuals to Egypt, El Salvador, Iraq, Mexico, Nigeria, Saudi Arabia, the Sudan, Togo and the United States of America.

29. The Special Rapporteur appealed to the Governments concerned to ensure effective protection of those under threat or at risk of execution. He also urged the competent authorities to undertake full, independent and impartial investigations with respect to those violations and to adopt all necessary measures to prevent further violations of the right to life. The Special Rapporteur requested that he be informed of every step taken in this regard.

30. In addition, since 1995, joint urgent appeals have been sent to Governments when the relevant issues concerned the mandate of more than one special rapporteur or working group. During 1995 and 1996, 3/ the Special Rapporteur participated in, respectively, 14 and 11 joint urgent appeals.

C. Other allegations

31. Alleged cases of extrajudicial, summary or arbitrary executions were transmitted to concerned Governments in the form of case summaries. They were accompanied by letters requesting Governments to provide the Special Rapporteur with information concerning the progress and results of investigations conducted with respect to these cases, penal or disciplinary sanctions imposed on the perpetrators, compensation provided to the family of the victim, as well as with any other pertinent comments or observations. 4/ In these letters, the Special Rapporteur also urged Governments to take steps that might be necessary in order to investigate, prosecute, impose appropriate sanctions and provide compensation in accordance with international standards, as well as to take measures to prevent the recurrence of such acts.

32. The Special Rapporteur sent alleged cases of extrajudicial, summary or arbitrary executions to the Governments of the following 89 countries: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bangladesh, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Côte d'Ivoire, Cuba, Czech Republic, Djibouti, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, France, Germany, Ghana, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kenya, Lebanon, Lesotho, Liberia, Malawi, Mali, Malaysia, Mauritania, Mexico, Morocco, Myanmar, Nepal, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, Tajikistan, Thailand, Togo, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay, United States of America, Venezuela, Yemen, Zaire and Zimbabwe. The Special Rapporteur also transmitted one case to the Palestinian Authority.

33. The number of persons whose cases were transmitted is given in table 2. It should be noted, however, that, on the basis of experience gained, statistical

methods were rationalized several times during the years under review. As a result, a comparison of figures regarding number of cases among the years may present a misleading picture. While, at first, groups of unidentified persons were included in the statistics, during the past two years the Special Rapporteur excluded unidentified persons, unless they could easily be identified. This is due, in particular, to the fact that during these years the Special Rapporteur acted increasingly on behalf of large groups for which only an approximative number of individuals was known, such as groups of refugees, internally displaced persons, members of a certain family, inhabitants of a particular village or civilians of a specific town. During 1994, considerably fewer cases were processed owing to a severe shortage of staff assisting the Special Rapporteur in the discharge of his mandate during that year.

Table 2

Number of cases sent by the Special Rapporteur since 1992

Year	Number of cases	Number of Governments
1992	1 900	40
1993	2 300	51
1994	700	45
1995	820	71
1996 a/	1 190	46

a/ Up to 1 September 1996.

34. Other allegations of a more general nature were transmitted to concerned Governments with requests to clarify the substance of these allegations and/or to provide the Special Rapporteur with more specific information, such as legal texts and other relevant documents. These general allegations include, for example, reports about persistent impunity or legislation alleged to be in contravention of restrictions on the application of capital punishment contained in pertinent international instruments.

D. Government replies and follow-up communications

35. As mentioned above, all communications sent by the Special Rapporteur to Governments are accompanied by requests for specific information in response to specific questions. Despite the Commission's adoption of several resolutions urging Governments to provide replies to the Special Rapporteur's communications, many queries by the Special Rapporteur remained unanswered.

36. The Commission on Human Rights first requested the Special Rapporteur to follow up on allegations of extrajudicial, summary or arbitrary executions in 1992. The Special Rapporteur believes that follow-up efforts should focus on

how Governments comply with their obligation under international law to conduct full, independent and impartial investigations into all allegations of extrajudicial, summary or arbitrary executions transmitted to them, with a view to clarifying the circumstances, identifying and prosecuting those responsible, granting compensation to the victims or their families and preventing future violations.

37. Pursuant to the request of the Commission, the Special Rapporteur sent follow-up communications to numerous Governments with respect to transmitted allegations for which no reply had been received or for which replies had been received that could not be considered satisfactory. The latter included those of a general character, those indicating that investigations had not yet been finalized and were closed for lack of evidence, or those in which Governments argued that the allegations were factually incorrect or provided a different explanation of the events leading to the death of the person in question. Table 3 shows on a yearly basis the number of Governments to which the Special Rapporteur transmitted allegations, the number of Governments that replied, and the number of follow-up communications sent.

Table 3

Government communications since 1992

Year	Number of Governments to which urgent appeals and/or cases were transmitted	Number of Governments that provided replies	Number of Governments to which follow-up communications were sent
1992	54	26	-
1993	69	38	30
1994	65	33	35
1995	87	41	20
1996 a/	54	37	46

a/ Up to 1 September 1996.

38. The Special Rapporteur also addressed letters to sources of allegations informing them of the contents of government replies concerning the cases they submitted. In those letters, the Special Rapporteur requested that the sources provide the Special Rapporteur with additional comments or observations. In cases where the reply from a source contradicted the Government's response, the Special Rapporteur also sent a follow-up communication to the Government, requesting that it provide him with additional information. In general, the Special Rapporteur requests answers to specific questions to enable him to form

a conclusion on the merits of the allegations and the veracity of the information provided by Governments and sources respectively.

E. Visits

39. The Special Rapporteur considers on-site visits an essential component of his mandate. The aim of such visits is to obtain first-hand information on the situation of the right to life in the countries visited, to report on his findings and to propose, in a spirit of cooperation and assistance, recommendations to improve situations identified as matters of concern.

40. During the period under review, the Special Rapporteur conducted visits to the territory of the former Yugoslavia, Peru, Rwanda, Indonesia and East Timor, Colombia, Burundi and Papua New Guinea. The visit to Colombia was undertaken with the Special Rapporteur on torture. At the Commission's request, he also accompanied the Special Rapporteurs on Yugoslavia and Rwanda. A visit to Nigeria with the Special Rapporteur on the independence of judges and lawyers is scheduled for 1996. The Special Rapporteur has outstanding invitations from the Governments of Algeria and Sri Lanka for visits. The Governments of Azerbaijan and Gabon extended invitations to the Special Rapporteur, which he was unable to honour in the light of other priorities.

41. The selection of countries that he wishes to visit is made by the Special Rapporteur primarily on the basis of the number and gravity of allegations and reports he receives concerning violations of the right to life occurring in the given country. In addition, the absence of adequate responses from the Government or recurrent contradictions between information received from the source and the Government may trigger the Special Rapporteur's interest in visiting a country.

42. Repeated demands to extend an invitation for a visit were forwarded to the Governments of Bangladesh, China, India, Mexico, Nigeria, Tajikistan, Turkey and the United States of America. Despite the fact that the Government of Turkey, in principle, accepted a visit, further efforts by the Special Rapporteur have not yet led to such a visit. The Government of Bangladesh declined the proposal of the Special Rapporteur.

43. In conformity with requests made by the Commission on Human Rights in its resolutions on the mandate, the Special Rapporteur intends to maintain close contact with Governments of the countries visited to assist them, to the maximum extent possible, with the implementation of recommendations he issued following his missions. Follow-up visits within a reasonable period of time are also envisaged. The Special Rapporteur received an invitation for such a visit from the Government of Colombia.

44. The Special Rapporteur wishes to reiterate that an on-site visit does not entail the condemnation of a country. Instead, it is envisaged as an expression of concern and aims at improving his understanding of a particular situation to enable him to formulate useful recommendations. Also, visits do not have the character of a judicial inquiry; they cannot replace investigations by competent judicial authorities.

F. Other activities

45. The Special Rapporteur issued press releases following his submission of annual reports and reports on country visits to the Commission on Human Rights. In addition, press releases were issued at the Special Rapporteur's request with a view to publishing certain activities and to inform the general public of his concern about some specific country situations. In order to enhance public awareness of the mandate, the Special Rapporteur offered interviews to, inter alia, the British Broadcasting Corporation (BBC), Africa Number 1, Radio France International, and the Australian Broadcasting Corporation, and to newspapers from various countries. Moreover, in many instances, the Special Rapporteur gave press conferences during his country visits.

46. The Special Rapporteur regularly consulted with non-governmental organizations or participated as a resource person in meetings and conferences organized by them. The Special Rapporteur also received a number of invitations from universities or academic institutions to present lectures on his mandate and/or related issues, which he accepted when the availability of funds and time permitted.

47. The Special Rapporteur's cooperation with the United Nations High Commissioner for Human Rights and with other United Nations bodies in the implementation of his mandate is discussed in chapter VI, section C.

IV. SITUATIONS INVOLVING VIOLATIONS OF THE RIGHT TO LIFE

A. Capital punishment

48. Since 1993, the Commission on Human Rights has reiterated its request to the Special Rapporteur to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

49. The Special Rapporteur received numerous and/or alarming allegations about legislation and state practices leading to the imposition and execution of death sentences where the defendants did not fully benefit from international guarantees and safeguards. Such reports concerned, inter alia, China, Egypt, the Islamic Republic of Iran, Iraq, Kuwait, Nigeria, Pakistan, Saudi Arabia and the United States of America.

50. As to death sentences handed down on persons convicted of crimes committed when they were under 18 years of age, or legislation permitting the imposition of capital punishment on minors, whether or not that legislation was applied in practice, the Special Rapporteur received reports and allegations regarding China, the Islamic Republic of Iran, Pakistan and the United States of America. The Special Rapporteur is particularly concerned about the situation in the United States of America, where a relatively high number of death sentences are imposed, and carried out, on minors as well as on mentally retarded persons.

51. More detailed information on capital punishment can be found in chapter VI, section A, in which issues of special concern to the Special Rapporteur are discussed.

B. Death threats

52. Reports and allegations alerting the Special Rapporteur to situations in which the lives and physical integrity of persons are feared to be at risk account for a large part of the information brought to his attention. The transmission of urgent appeals with the aim of preventing loss of life are therefore an essential part of the Special Rapporteur's mandate.

53. During the period under review, the Special Rapporteur expressed concern about the pattern of intimidation and threats, often followed by extrajudicial, summary or arbitrary executions, persisting in Brazil, Colombia, El Salvador, Guatemala and Peru. In each country, the lives of human rights activists, members of the political opposition, trade unionists, community workers, religious activists, writers and journalists were reported to be at serious risk. At present, the Special Rapporteur is especially concerned about the situation in Mexico, where he noted a sharp increase in death threats and intimidation of human rights activists, members of political parties and journalists during 1996. In this context, he also remains concerned about the situation in Colombia.

C. Deaths in custody

54. The Special Rapporteur received several allegations and reports concerning deaths in custody in Algeria, Armenia, Australia, Bulgaria, Cambodia, Colombia, China, Cuba, Egypt, India, Indonesia, the Islamic Republic of Iran, Israel, Kenya, Myanmar, Nigeria, Pakistan, Peru, the Philippines, Senegal, the Sudan, Syrian Arab Republic, Tajikistan, Tunisia, Turkey, Ukraine and the United Kingdom of Great Britain and Northern Ireland.

55. Deaths alleged to be the result of torture or other cruel, inhuman or degrading treatment were reported in many countries, including Cameroon, China, Egypt, India, Indonesia, the Islamic Republic of Iran, Israel, Kenya, Mexico, Morocco, Nepal, Pakistan, Peru, South Africa and Turkey. The Special Rapporteur also received allegations of deaths in custody owing to medical neglect or otherwise untenable prison conditions in the following countries: Azerbaijan, Colombia, Gabon, Kenya, Mongolia, Morocco, Nigeria, Syrian Arab Republic, Tajikistan and Togo.

56. The Special Rapporteur is concerned about the persistence of allegations of deaths in custody, suggesting patterns of violence against detainees, often with a lethal outcome, in a number of countries including China, Egypt, India, Pakistan and Turkey. He is also concerned that in several countries, inter alia, Australia, Bulgaria, France and the United Kingdom, a high percentage of the allegations of deaths in custody concerned persons belonging to ethnic, linguistic or national minorities. The Special Rapporteur is especially worried that, as a general rule, and not only in countries where a

pattern of deaths in custody appears to exist, there is little indication of effective action by state authorities to bring to justice those responsible for this type of violation of the right to life.

D. Deaths as a result of excessive use of force by law enforcement officials

57. The Special Rapporteur received a considerable number of allegations concerning violations of the right to life as a consequence of excessive use of force by police and security officers. Allegations in this category were reported in many countries, including Angola, Bahrain, Bangladesh, Bolivia, Brazil, Burkina Faso, Cambodia, Chad, China, Colombia, Cuba, Egypt, El Salvador, Guatemala, India, Indonesia, Iraq, Israel, Kenya, Mexico, Nigeria, Peru, the Philippines, South Africa, Sri Lanka, Turkey and the United Kingdom. The Special Rapporteur was particularly shocked by reports concerning the deliberate use of firearms by Israeli security forces and Brazilian military police against young children.

58. Participants in demonstrations were reportedly killed by members of security forces using excessive force in, inter alia, Bahrain, Bangladesh, Chad, Chile, India, Indonesia and East Timor, Mexico, South Africa and Zaire. Excessive force was used by law enforcement officials in places of detention in countries such as Brazil and Turkey.

E. Deaths as a result of attacks by civil defence forces and paramilitary groups

59. Members of paramilitary groups or armed individuals cooperating with security forces or operating with their acquiescence were also reported to have resorted to arbitrary and excessive force. In some instances, such groups were reported to have been established by security forces themselves; in other cases, they were said to be at the service of individuals and/or organizations for the defence of a particular interest, in many cases of an economic nature. Violations of the right to life by paramilitary groups were reported in Brazil, Colombia, El Salvador, Guatemala, Haiti, Mexico, Peru, the Philippines and Turkey.

60. The Special Rapporteur is extremely concerned about the situation in Colombia. During 1996, he continued to receive a large number of allegations and reports of massacres committed by paramilitary groups, such as the killing of 14 persons, including two minors, on 22 April in Segovia, and the killing of 11 persons, including a six-year-old child, on 3 April in Antioquia.

61. The Special Rapporteur was also distressed by allegations that, on 9 February 1996 seven persons from one family, including four minors and one 86-year-old man, were killed in Buenavista, Philippines by members of the Civilian Volunteers Organization, a group of citizens operating as a paramilitary group, which is sanctioned by the Government and has the task of checking rebel activities.

F. Violations of the right to life during armed conflicts

62. The Special Rapporteur received numerous reports suggesting that deaths as a consequence of armed conflicts continue to occur on an alarming scale. Reports of killings of persons hors de combat, and in particular of civilians during internal armed conflicts, were received from Afghanistan, Angola, Armenia, Azerbaijan, Bosnia and Herzegovina, Burundi, Colombia, Croatia, Djibouti, Guatemala, Mexico, Myanmar, Rwanda, Somalia, Sri Lanka, Tajikistan, Turkey and Yemen.

63. Many thousands of persons not participating in armed confrontations were said to have lost their lives as direct victims of conflicts, for example through indiscriminate shelling or deliberate executions, or indirectly, as a consequence of blocking the flow of water, food and medical supplies. Such measures were reported to have particularly affected children, the elderly and those in poor health.

64. In addition to the allegations transmitted by letter to the Governments concerned, the Special Rapporteur also sent a number of urgent appeals on behalf of groups of civilians in specified towns or areas which were at risk of being attacked by government armed forces in Burundi, the Russian Federation (Chechnya) and Sri Lanka.

65. Communal violence, understood as acts of violence committed by one ethnic, religious, linguistic, national or social group against another group, was reported in Bangladesh, Burundi, Cameroon, Chad, Djibouti, Mali, Nigeria and Somalia. Government forces are often said to support one side in the conflict or even instigate hostilities, rather than intervene to stop violence between different groups. The Special Rapporteur wishes to reiterate the warnings he included in his previous reports to the Commission on Human Rights that such conflicts, if allowed to continue, may degenerate into massacres or even genocide. The Special Rapporteur once again expresses his profound concern regarding the situation in the Great Lakes region.

66. In this context, the Special Rapporteur also wishes to address the problem of human rights violations committed by peacekeeping forces. Increasingly called upon to exercise peacekeeping tasks, United Nations personnel in many countries are operating under very difficult and often dangerous conditions. A large number of United Nations staff have on many occasions risked, and lost, their lives. However, reports have been received indicating that members of United Nations forces were themselves involved in extrajudicial, summary or arbitrary killings in Somalia. The Special Rapporteur is of the view that, as each State is bound under international law standards, an organization, such as the United Nations, has at least the same degree of responsibility.

67. The Special Rapporteur recommends that members of the United Nations field missions be held responsible for violations of rights and guarantees contained in international human rights instruments. It is desirable to envisage the institution of an organ within the United Nations, or within each peacekeeping or observer mission, to investigate human rights abuses by members of such mission and hold their authors responsible. Provisions should also be included to grant compensation to the victims of such abuses or, in the case of

extrajudicial killings, to their families. With a view to preventing such incidents, all members of peacekeeping and observer missions should receive thorough training in human rights matters, as well as in mediation and conflict resolution.

G. Genocide

68. The Special Rapporteur has observed a great reluctance in the international community to use the term "genocide", even when reference is made to situations of grave violations of the right to life which seem clearly to match the criteria contained in the Convention on the Prevention and Punishment of the Crime of Genocide. Article II of the Convention reads:

> "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> "(a) Killing members of the group;
>
> "(b) Causing serious bodily or mental harm to members of the group;
>
> "(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> "(d) Imposing measures intended to prevent births within the group;
>
> "(e) Forcibly transferring children of the group to another group."

69. The description of atrocities committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as "ethnic cleansing" particularly seems to be a euphemism. Following his visits to the territory of the former Yugoslavia, the Special Rapporteur expressed the view that the deliberate and systematic nature of killing of Muslims and Croats by Serbs, the dissemination of pseudo-historical and political rationales for ethnic cleansing, the disarming of the populations concerned prior to the commencement of cleansing operations, and other circumstances, strongly suggest the existence of a policy of killing members of a national, ethnic or religious group, in whole or in part, consistent with the terms of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted in 1948.

70. In his report to the Commission on Human Rights on his mission to Rwanda, which took place from 8 to 17 April 1993, the Special Rapporteur indicated that, although it was not for him to pass judgement at that stage, the cases of intercommunal violence brought to his attention indicated very clearly that the victims of the attacks, Tutsis in the overwhelming majority of cases, had been targeted solely because of their ethnicity and for no other objective reason. He concluded that article II, subparagraphs (a) and (b), of the Convention on the Prevention and Punishment of the Crime of Genocide might therefore be considered to apply to those cases. The Special Rapporteur strongly regrets that the report on his visit did not receive attention from the Government or the Commission on Human Rights.

71. Article III of the Convention on the Prevention and Punishment of the Crime of Genocide stipulates that:

> "The following acts shall be punishable:
>
> "(a) Genocide;
>
> "(b) Conspiracy to commit genocide;
>
> "(c) Direct and public incitement to commit genocide;
>
> "(d) Attempt to commit genocide;
>
> "(e) Complicity in genocide"

and article IV that:

> "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

72. In this respect, the Special Rapporteur urges the international community and all concerned States to cooperate fully with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, particularly by arresting and handing over suspects, so as to bring to justice, as soon as possible, those responsible for the above-mentioned crimes.

73. At present, the Special Rapporteur is extremely concerned about the situation in Burundi, which, according to the Special Rapporteur on the situation of human rights in Burundi, is characterized by a long series of massacres and acts of genocide, 5/ and about the situation in the eastern part of Zaire, where ethnic conflicts have intensified and further escalation of violence is feared. 6/

H. Imminent expulsion of persons to a country where their lives are in danger

74. The Special Rapporteur received reports about the imminent extradition, refoulement or return of one or more persons to countries or areas where there are grounds to believe that their lives are at risk. During the period under review, allegations in this category were reported in, inter alia, Burundi, Germany, Macedonia, the Netherlands, Portugal (Macao), Sweden, Tajikistan and the United Republic of Tanzania.

I. Impunity

75. It is the obligation of Governments to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, to grant compensation to the victims or their families, and to take effective measures to avoid future recurrence of such violations. The Special Rapporteur has noted that impunity continues to be the principal cause of the perpetuation and encouragement of violations of human rights, and, in particular, extrajudicial, summary or arbitrary executions. Impunity will be discussed in detail in chapter VI, section B.

J. Rights of victims

76. The rights of victims or their families to receive adequate compensation is both a recognition of the State's responsibility for the acts committed by its personnel and an expression of respect for the human being. Granting compensation presupposes compliance with the obligation to conduct investigations into allegations of human rights abuses with a view to identifying and prosecuting their alleged perpetrators. Financial or other compensation provided to the victims or their families before such investigations are initiated or concluded, however, does not exempt Governments from this obligation.

77. The Special Rapporteur is concerned about the numerous reports he has received indicating that in many cases no compensation was provided. In most cases, this seems to be the corollary of impunity. The Special Rapporteur regrets that, despite his requests in letters accompanying alleged cases of extrajudicial, summary or arbitrary executions, very few States have provided him with information in this respect.

78. The Special Rapporteur also notes that neither of the two Security Council resolutions establishing International Tribunals for the former Yugoslavia and for Rwanda contain provisions concerning compensation for the victims. The Special Rapporteur believes that the establishment of an international fund for reparation payments should be considered. Such a fund could be allocated for the payment of at least some compensation to the victims or their families and would undoubtedly enhance faith in the work of the Tribunals and people's willingness to cooperate with them.

V. ISSUES REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Violations of the right to life of women

79. During the period under review, the Special Rapporteur took action on behalf of more than 590 women. This figure reflects only the cases in which it was specifically indicated that the victim was female, but does not necessarily show the actual number of women on whose behalf the Special Rapporteur intervened. This is attributable mainly to two reasons: in some cases, sources do not indicate whether the victim is male or female and the gender cannot be

determined by the name; in other cases, allegations refer to groups of unidentified civilians, without gender specification.

80. The figure mentioned above shows that women make up a relatively low percentage of purported victims of violations of the right to life reported to the Special Rapporteur. The under-representation of women in the political and economic life of many countries implies that they are less perceived as a threat and therefore less exposed to acts of violence by Governments. However, in areas where women are actively participating in public life, they appear to be in a similar position as their male counterparts. Some examples in this regard include the following: death threats against novelist Taslima Nasram in 1993 in Bangladesh and Judge Antonia E. Saquicuray Sánchez in June 1995 in Peru; the attempted murder of Aida Abella, President of the Unión Patriótica of Colombia in May 1996; the killing of Lucina Cárdenas in Guatemala in December 1995; and the killing in February 1996 of Zahra Rajabi, a leading figure in the Iranian People's Mojahedin Organization in Turkey.

81. The Special Rapporteur took action on behalf of many other women whose lives were in danger or who had been killed in the following countries: Algeria, Argentina, Brazil, China, Colombia, Cuba, El Salvador, Ethiopia, Guatemala, India, Indonesia, Iran (Islamic Republic of), Liberia, Mexico, Myanmar, Nigeria, Papua New Guinea, Pakistan, Paraguay, Peru, the Philippines, Russian Federation, Sierra Leone, Singapore, South Africa, Sri Lanka, Sudan, Togo, Turkey, United Arab Emirates and United Kingdom of Great Britain and Northern Ireland.

82. The Special Rapporteur wishes to emphasize that, owing to a lack of human resources, an in-depth analysis of gender issues has not been feasible. In this respect, he refers to the recommendation made at the 3rd meeting of Special Rapporteurs, Representatives, Experts and Workings Groups of the Commission on Human Rights, during which concerted action by the United Nations Development Fund for Women, the United Nations Population Fund and the Centre for Human Rights was suggested, with a view to providing support in the recruitment of professionals who were experts on the human rights of women.

B. Violations of the right to life of minors

83. During the period under review, the Special Rapporteur took action on behalf of more than 495 minors. This figure reflects only the number of identified minors, whose ages were reported to the Special Rapporteur. The Special Rapporteur notes with regret that children continue to be victims of violations of the right to life in many countries. The types of violations to which children are exposed range from the death penalty to death in custody, death owing to abuse of force and death during armed conflicts. In Burundi, Liberia, Pakistan, Rwanda, the Russian Federation (Chechnya) and Sri Lanka, many children have allegedly been killed in the context of armed conflict or internal strife or have become victims of indiscriminate attacks.

84. The Special Rapporteur is particularly shocked by the large number of reports he has received on the use of lethal force by members of security forces against children and youths, which is the case in the Occupied Territories,

where a high number of youths were reportedly killed by members of the Israeli Defence Forces, particularly in 1993. The Special Rapporteur also received alarming reports of deliberate use of firearms by military police, security forces and police agents participating in "social cleansing" activities against street children in Brazil, Colombia and Guatemala. Children were also reported to have died in custody in several countries, including Bahrain, France and Germany. The Special Rapporteur was extremely concerned about the fact that, in the cases of France and Germany, the victims were minors of foreign origin or belonging to ethnic minorities.

85. The Special Rapporteur also intervened in cases of imposition of the death penalty on minors, for example in the cases of Salamaat Masih, a 13-year-old boy sentenced to death in Pakistan for blasphemy, and 15-year-old Sarah Balabagan, a Filipino girl sentenced to death in the United Arab Emirates for murder. The Special Rapporteur also sent urgent appeals in cases where the death penalty was imposed for crimes committed when the accused was a minor, namely, to the United States of America in the case of Johnny Frank Garrett. According to information received, since 1990, the Islamic Republic of Iran, Pakistan, Saudi Arabia, the United States of America and Yemen are known to have executed prisoners who were under 18 years of age at the time of the crime.

C. The right to life and mass exoduses

86. According to information received, massive displacements of populations resulted mainly in the context of armed conflicts, including indiscriminate military attacks against civilians during counter-insurgency operations, attacks by irregular armed groups, and by communal or inter-ethnic violence. For a broader overview of the phenomenon and its repercussions on various aspects of human rights, reference is made to the report on internally displaced persons submitted to the Commission on Human Rights by the representative of the Secretary-General, Mr. Francis Deng. 7/

87. Large-scale violations of human rights in armed conflicts, including the right to life, have led to massive displacements of populations in Afghanistan, Azerbaijan (Nagorno-Karabakh), Georgia (Abkhazia), Liberia, the Russian Federation (Chechnya), Sierra Leone, Sri Lanka, the Sudan and the former Yugoslavia.

88. Attacks by the army and paramilitary groups against the guerrillas in Colombia have also been reported to have led to the displacement of a large proportion of the population. In addition, it has been reported that, in Turkey, most of the population of Kurdish origin in the south-eastern part of the country has been displaced as a result of the confrontation between Turkish security forces and Kurdish Workers Party guerrillas. Conflicts between the Mexican Army and the Zapatista National Liberation Army caused large numbers of people to flee from the area of strife. The Jumma people of the Chittagong Hill tracts in Bangladesh, some of whom had sought refuge in India, are another example.

89. Displacement has also emerged as a result of ethnic violence, such as in Rwanda and Burundi. Confrontations between the Banyarwanda and the

autochthonous groups in North Kivu, Zaire have led to the displacement of population and has generated a new flow of refugees, this time Zairians seeking refuge in Rwanda, thus aggravating the already tense situation in the Great Lakes region. 6/

90. The Special Rapporteur has taken action concerning threats or violations of the right to life directed against refugees and internally displaced persons. Thus, in August 1996, he transmitted an urgent appeal, together with the Representative of the Secretary-General on Internally Displaced Persons, on behalf of internally displaced persons who were being transported from Khovaling district to Tavildara, an area of active armed conflict in Tajikistan. Additionally, in April 1996, he sent an urgent appeal on behalf of the civilian population in southern Lebanon, after Israel launched an attack on a United Nations compound in the village of Qana, which reportedly provided refuge to 400 civilians. Moreover, he transmitted urgent appeals after having been informed that Myanmar refugees living in Thailand were being attacked by the Democratic Karen Buddhist Organization, an armed group reportedly supported by the State Law and Order Restoration Council, Myanmar's military authority.

91. During 1995, he transmitted allegations regarding the Xamán massacre in Guatemala, in which 11 members of the resettled community Aurora 8 de Octubre of Kekchi origin were killed as a result of an attack by the armed forces. Allegations regarding acts of violence by members of the Force d'action rapide of the armed forces against displaced people, most of them members of the Afar community, in the Ariba suburb of the capital of Djibouti, were sent to the Government in 1994. In addition, the Special Rapporteur sent a letter to the Government of Liberia after having been informed of a massacre of up to 600 people at a camp for displaced people at Harbel, near Monrovia, on 6 June 1993.

92. In addition, in his previous report to the Commission on Human Rights, the Special Rapporteur expressed concern about the Kibeho camp massacre in Rwanda in April 1995, which caused a high number of casualties.

D. Violations of the right to life of persons exercising their right to freedom of opinion and expression

93. During the period under review, the Special Rapporteur has taken action on behalf of more than 2,000 persons who were said to have been killed or threatened with death for exercising their right to freedom of opinion and expression and peaceful assembly. The Special Rapporteur has continuously received reports concerning death threats, and killings of members of opposition political parties, trade unions, student movements, community organizations and human rights organizations, as well as of journalists and writers, in many countries, including Afghanistan, Algeria, Angola, Bangladesh, Brazil, Cambodia, China, Colombia, Djibouti, Egypt, El Salvador, Ethiopia, Guatemala, Honduras, India, Indonesia (East Timor), the Islamic Republic of Iran, Iraq, Israel, Mexico, Nepal, Nigeria, Pakistan, Peru, the Philippines, Rwanda, South Africa, Sri Lanka, Togo, Turkey and Uzbekistan.

94. The Special Rapporteur has repeatedly expressed his utmost concern regarding killings resulting from excessive use of force by law enforcement officials on participants in demonstrations.

E. The right to life and the administration of justice

95. The Special Rapporteur has taken action on behalf of persons involved in the administration of justice, particularly judges, prosecutors, lawyers, complainants and witnesses in judicial proceedings, who either received death threats or were killed. In this context, he sent communications to more than 15 countries.

96. These communications included the following:

(a) Urgent communications sent on behalf of the following persons: Federico Huber, lawyer in Argentina; prosecutors Mauricio Assayag and José Munhoz Pinheiro and Judge Maria Luiza Capiberibe, in Brazil; lawyers of the Corporación Colectivo de Abogados "José Alvear Restrepo", in Colombia; Mario Salvador Jiménez, Héctor Raúl Orellana and María Eugenia Villaseñor, judges at the Appeals Court of Guatemala; José Lavanderos Yáñez, lawyer in Mexico; Alberto Alderete, lawyer in Paraguay; Judge Antonia E. Saquicuray Sánchez and prosecutor Ana Cecilia Magallanes, in Peru; Fevzi Veznedaroglu and Metin Can, human rights lawyers in Turkey;

(b) Allegations sent regarding the killings of the following: Martin A. Parroquiano Cubidas, prosecutor in Colombia; Javier Alberto Barriga Vergel, lawyer in Colombia; Abdel-Harith Madani, lawyer in Egypt; Edgar R. Elias Ogaldez, judge in Guatemala; Jalil Andrabi, lawyer in India; Michael Okere Mute Esiri, lawyer in Nigeria; Patrick Kebbie, lawyer in Sierra Leone; and Meet Scirrhoid and Fail Canaan, lawyers in Turkey.

F. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities

97. During the period under review, the Special Rapporteur transmitted allegations to more than 17 Governments regarding persons belonging to national, ethnic, religious or linguistic minorities. Communications were sent on behalf of a large number of persons, belonging to the following minority groups: Chakmas in Bangladesh; Macaws indigenous people in Brazil; Roma community in Bulgaria; Shua Arabs in Cameroon; Tibetans in China; members of various indigenous communities in Colombia and Mexico; members of the Afar ethnic group in Djibouti; members of the Cakchikel indigenous group in Guatemala; leaders of Christian churches in the Islamic Republic of Iran; Marsh Arabs in Iraq; Palestinians in Israel; Tuaregs in Mali; members of the Karen ethnic minority in Myanmar; Ogonis in Nigeria; Christians in Pakistan; Kurds in Turkey; African Americans in the United States of America; Yucpa indigenous people in Venezuela; and Kasaians and Banyarwanda in Zaire.

G. Violations of the right to life and terrorism

98. The Special Rapporteur is aware of the waves of violence caused by armed opposition groups resorting to terrorism as a tactic of armed struggle against Governments. He is aware that violent acts committed by such groups have led to killings of many innocent civilians in a number of countries, including Algeria, Colombia, Egypt, France, India, Israel, Pakistan, Sri Lanka, the Sudan and Turkey.

99. The Special Rapporteur expresses his repugnance at terrorist acts and understands the difficulties that the concerned Governments face in controlling violence by terrorist groups. However, he has noted that, in some countries, the Government's reaction to terrorist groups has resulted in counter-insurgency strategies aimed at targeting those suspected to be members, collaborators or sympathizers of those groups. In this context, the Special Rapporteur wishes to emphasize that the right to life is absolute and must not be derogated from, even under the most difficult circumstances. Governments must respect the right to life of all persons, including members of armed groups even when they demonstrate total disregard for the lives of others.

100. The request made by some Governments for the Special Rapporteur to take action with respect to killings committed by terrorists is to be noted. However, he wishes to emphasize that violent acts committed by terrorist groups do not fall within the purview of his mandate, as he can only take action when perpetrators are somehow linked to a State. Nevertheless, he wishes to mention that he continues to receive reports of killings by terrorists of members of security forces and civilians, with the aim of spreading terror and insecurity within the population. Reports of this nature have been received regarding Algeria, Colombia, Egypt, India, Israel, Peru, the Philippines and Turkey.

H. Violations of the right to life of staff members of the United Nations and of the specialized agencies

101. The Special Rapporteur is extremely concerned about killings of and death threats against United Nations staff and members of humanitarian organizations. He deeply regrets the killings of three representatives of the International Committee of the Red Cross (ICRC) on 4 June 1996 in the province of Cibitoke, Burundi. In his report on his mission to Burundi, 8/ the Special Rapporteur referred, inter alia, to the alleged killing in August 1994 of a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) by military personnel in Kirundo, as well as the death threats received by the commander of the Organization of African Unity (OAU) observer mission in Muyinga. The Special Rapporteur took action on behalf of Carmelo Soria, a United Nations staff member killed in Chile.

102. In addition, the Special Rapporteur deplores the large number of deaths of United Nations peacekeepers, which were connected for the most part with the armed conflicts in the former Yugoslavia and Somalia.

103. The Special Rapporteur calls on all Governments to ratify the 1994 Convention on the Safety of United Nations and Associated Personnel, the

provisions of which place on them an obligation to ensure the safety and security of United Nations personnel, including United Nations peacekeepers, as well as persons deployed by humanitarian non-governmental organizations and agencies that are under an agreement with the Secretary-General or a specialized agency.

VI. ISSUES OF SPECIAL CONCERN TO THE SPECIAL RAPPORTEUR

A. Capital punishment

104. The Special Rapporteur's action in response to allegations of violations of the right to life in connection with capital punishment has been guided by the following principles:

(a) The desirability of the abolition of the death penalty;

(b) The need to ensure the highest possible fair trial standards;

(c) The observance of special restrictions on the application of the death penalty.

1. Desirability of the abolition of the death penalty

105. Although capital punishment is not yet prohibited under international law, the desirability of its abolition has been strongly reaffirmed on different occasions by United Nations organs and bodies in the field of human rights, inter alia, the Security Council, 9/ the Human Rights Committee 10/ and the General Assembly. 11/ In the same vein, reference to the report of the Secretary-General on capital punishment, submitted to the Economic and Social Council in 1995, 12/ is of relevance. Reference should also be made to the worldwide survey carried out by the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat on developments with regard to capital punishment. 13/ In addition, the Special Rapporteur has been informed that new members joining the Council of Europe are required to sign within one year and ratify within three years after joining the organization, the Sixth Optional Protocol to the European Convention, and are also required to place a moratorium on executions immediately thereafter.

106. During his years in office, the Special Rapporteur has received, with concern, reports of the extension of the scope or reinstatement of the death penalty in a number of countries, to offences previously not punishable by death. The Special Rapporteur expressed concern about such tendencies in Bangladesh, China, Côte d'Ivoire, Egypt, the Gambia, Guatemala, Kuwait, the Libyan Arab Jamahiriya, Pakistan, Peru, Nigeria, Saudi Arabia and the United States of America.

107. It is worth emphasizing that article 6, paragraph 2, of the International Covenant on Civil and Political Rights provides that, "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes ...". In its comments on article 6 of the Covenant, the

Human Rights Committee stated that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. In addition, paragraph 1 of the safeguards guaranteeing protection of the rights of those facing the death penalty, approved by the Economic and Social Council in its resolution 1984/50 of 25 May 1984, states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. In this regard, the Special Rapporteur wishes to express his concern about the fact that certain countries, namely China, the Islamic Republic of Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and drug-related offences.

108. Given that the loss of life is irreparable, the Special Rapporteur strongly supports the conclusions of the Human Rights Committee and emphasizes that the abolition of capital punishment is most desirable in order fully to respect the right to life. He also wishes to mention that, while there is a fundamental right to life, there is no such right to capital punishment. In this context, he welcomes the fact that, on 28 November 1995, the Government of Spain removed the death penalty from the Military Penal Code, and that in Mauritius, the Parliament passed a bill abolishing the death penalty for all offences.

109. He welcomes decisions such as the judgement of the Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland, wherein the execution of a death sentence five years after it had been passed was found to constitute cruel and inhuman punishment. The Supreme Court of Zimbabwe reportedly reached a similar conclusion in another case. While welcoming these decisions, the Special Rapporteur expresses concern that they may encourage Governments to carry out executions of death sentences more speedily. In this respect, he wishes to refer to Glen Ashby in Trinidad and Tobago, who was executed 4 years and 11 months after having been sentenced to death, while appeal procedures were still pending.

2. Fair trial

110. In monitoring the application of existing standards relating to the death penalty, the Special Rapporteur has directed his attention in particular to trial procedures leading to the imposition of capital punishment. All safeguards and due process guarantees, both at pre-trial stages and during the actual trial, as provided for by several international instruments, 14/ must be fully respected in every case.

111. The Special Rapporteur wishes to reiterate that proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, as found in the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account. The proceedings must guarantee the right to review of both the factual and the

legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at the first instance. The defendant's right to seek pardon, commutation of sentence or clemency must also be ensured

112. The Special Rapporteur is particularly concerned about impositions of the death penalty by special jurisdictions. These jurisdictions are often set up as a response to acts of violence committed by armed opposition groups or in situations of civil unrest, in order to speed up proceedings leading to capital punishment. Such special courts often lack independence, since sometimes the judges are accountable to the executive, or are military officers on active duty. Timelimits, which are sometimes set for the conclusion of the different trial stages before such special jurisdictions, gravely affect the defendant's right to an adequate defence. The Special Rapporteur also expressed concern about limitations regarding the right to appeal in the context of special jurisdictions. This is particularly worrying as these special jurisdictions are generally established in situations where rampant human rights violations already exist. During the period under review, reports in this regard included the following countries: Algeria, Egypt, Kuwait, Malawi, Nigeria, Pakistan and Syrian Arab Republic.

113. The case of Ken Saro-Wiwa, writer, environmentalist and President of the Movement for the Survival of the Ogoni People (MOSOP), and eight other Ogonis, sentenced to death allegedly after an unfair trial by the Civil Disturbances Special Tribunal in Port Harcourt, Rivers State, is a clear example. The members of the Tribunal were, reportedly, appointed by the Government, among which was a member of the armed forces.

114. Reports regarding the secrecy surrounding the trial and application of the death penalty in a number of States, in particular Belarus, China and Ukraine, are most disturbing. In this connection, the Special Rapporteur wishes to emphasize the fundamental importance of the right to a public trial. It has also been brought to the Special Rapporteur's attention that in some countries there is considerable official reluctance to reveal statistical information on the death penalty. This secrecy reportedly affects family members, who are not informed in advance of the date of a relative's execution and have no right to the body after execution. 15/

3. Observance of special restrictions on the application of the death penalty

115. Capital punishment is prohibited for juvenile offenders under international law. Article 6, paragraph 5, of the International Covenant on Civil and Political Rights stipulates that "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age ...". This principle has been embodied and reiterated in other international instruments. 16/ Imposition of capital punishment on mentally retarded or insane persons, pregnant women and recent mothers is also prohibited. In this respect, the Special Rapporteur wishes to express his utmost concern regarding information, according to which, since 1990, the Islamic Republic of Iran, Pakistan, Saudi Arabia, the United States of America and Yemen are known to have executed prisoners who were under 18 years of age at the time of the crime. He is deeply

concerned about legislation in China reportedly allowing for death sentences for minors.

116. In addition, the Special Rapporteur has received allegations concerning executions of mentally retarded persons in the United States of America. Similar reports were received concerning Kyrgyzstan.

117. The Special Rapporteur wishes to express his dismay at reports he received in 1995, according to which, in China, organs of executed persons were being used for transplants, and, in some instances, organs were removed even before execution took place. The Special Rapporteur communicated these allegations to the Government of China. In view of their gravity, he urges once again the authorities to undertake a thorough investigation into the matter and to inform him of the outcome.

B. Impunity

118. In his four reports to the Commission on Human Rights, the Special Rapporteur made ample reference to the obligation of States to conduct exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, to grant adequate compensation to the victims or their families, and to take effective measures to avoid the recurrence of such violations. 17/

119. In addition, the Human Rights Committee has stated, both in its general comments on article 6 of the International Covenant on Civil and Political Rights and in a number of decisions, that States parties are required to investigate all human rights violations, particularly those affecting the physical integrity of the victim; to purge and try those responsible; to pay adequate compensation to the victims or their dependants; and to prevent the recurrence of such violations.

120. The Special Rapporteur continued to receive information that indicates that grave violations of the above-mentioned obligations have not abated. Impunity remains the principal cause for the perpetuation of violations of human rights, and particularly those of the right to life. The manner in which a Government reacts to human rights violations committed by its agents, through action or omission, clearly shows the degree of its willingness to ensure effective protection of human rights. Very often, statements and declarations in which Governments proclaim their commitment to respect human rights are contradicted by a practice of violations and impunity. The Special Rapporteur considers that even if in exceptional cases Governments may decide that perpetrators should benefit from measures that would exempt them from or limit the extent of their punishment, the obligation of Governments to bring them to justice and hold them formally accountable stands. 18/

121. In some cases, the basis for impunity lies in legislation that exempts perpetrators of human rights abuses from prosecution. In previous reports to the Commission, the Special Rapporteur referred to amnesty laws in El Salvador and Mauritania, as well as provisions granting immunity from prosecution to members of the security forces in Bangladesh (Penal Code) and South Africa

(Further Indemnity Act). The promulgation of an amnesty law in Peru in June 1995, or the selective amnesty granted in February 1995 by the Togolese National Assembly, are examples in this regard.

122. In other cases, despite the existence of legal provisions for the prosecution of human rights violators, impunity continues in practice. It has been reported that authorities often do not react to complaints filed by victims, their families or representatives, or by international entities, including the Special Rapporteur. In this context, it should be recalled that Governments are under an obligation to initiate inquiries into allegations, ex officio, as soon as they are brought to their attention, particularly where the alleged violation of the right to life is imminent and effective measures of protection must be adopted by the authorities. However, in some countries, more often than not, investigations are not conducted. In other countries, despite the fact that investigations are initiated, they are never concluded, or if they are, sentences imposed on perpetrators appear to be disproportionate to the gravity of the crime committed, for example in East Timor, following the Dili massacre. There are also instances where low-ranking officials are convicted while those in positions of command escape responsibility.

123. Victims of and/or witnesses to human rights violations, who assist in investigative efforts, have also been subject to intimidation and death threats. Such incidents have been reported particularly in Argentina, Brazil, Chad, Colombia, Guatemala, Mexico, Nigeria, Pakistan, Peru and Turkey.

124. Furthermore, problems related to the functioning of the judiciary, particularly its independence and impartiality, have also encouraged impunity. In some countries there is no independent judiciary that could conduct such investigations, or the justice system does not function in practice. Such was reported to be the case in Burundi, Cambodia, Chad, Rwanda and Zaire. In countries where the justice system does not function properly it is desirable that reforms be implemented to enable the judiciary to fulfil its functions effectively. In some cases, which warrant particular treatment because of their special nature or gravity, Governments may envisage establishing special commissions of inquiry, which must fulfil the same requirements of independence, impartiality and competence as judges in ordinary courts. The results of their investigations should be made public and their recommendations binding on the authorities. The Special Rapporteur is concerned that in some cases recommendations made by such commissions are not followed in practice, such as in the case of Indonesia and the Philippines, or do not fulfil the above-mentioned requirements, and become tools used to evade the obligation to undertake thorough, prompt and impartial investigations into violations of the right to life.

125. The Special Rapporteur expresses his concern about reports regarding trials of members of the security forces before military courts, where, it is alleged, they evade punishment because of an ill-conceived esprit de corps, which generally results in impunity. Countries such as Colombia, Indonesia and Peru are well-known examples. He welcomes, however, recent jurisprudence of the Federal Supreme Court of Brazil, which has established that in matters of crimes against children, the competent courts are the civilian tribunals, even if the perpetrators are military officers.

126. The Special Rapporteur also wishes to refer to the International Tribunals established under Security Council resolutions 808 (1993) and 955 (1994) for certain serious crimes, including violations of the right to life, committed in the former Yugoslavia and in Rwanda. The Special Rapporteur welcomes these initiatives. He appeals to all Governments to cooperate fully with these Tribunals, in the interest of holding responsible the authors of such crimes committed in the former Yugoslavia and Rwanda. Concerns have been raised as to the apparent selectivity with regard to the countries for which international tribunals have been established. In fact, the former Yugoslavia and Rwanda are not the only conflict areas where massive violations of human rights and humanitarian law justify such an institution. Others, such as Burundi, Cambodia, Liberia and the Sudan, come readily to mind.

127. The Special Rapporteur believes that two measures could be taken to help overcome this perception of selectivity and contribute to a more impartial and comprehensive approach to the problem of impunity. These measures are: (a) the establishment of a permanent international criminal court with universal jurisdiction over mass violations of human rights and humanitarian law; such an international criminal court would have to be bestowed with an adequate mandate and sufficient means to enable it to conduct thorough investigations and enforce the implementation of its decisions; and (b) the adoption of a convention, similar to the Convention against Torture, which would provide domestic courts with international jurisdiction over persons suspected of having committed mass violations of the right to life. Such a convention should also contain provisions for the allocation of a voluntary fund for victims.

C. Cooperation with the United Nations High Commissioner for Human Rights and other United Nations bodies

128. The Special Rapporteur accords great importance to cooperation with other United Nations bodies dealing with issues related to his mandate. This has taken the form of consultations, either on questions concerning the day-to-day operation of his mandate, or in the preparation of, and during, on-site visits. The missions to Rwanda and to the former Yugoslavia, during which the Special Rapporteur accompanied the Special Rapporteurs on Rwanda and on Yugoslavia, at the Commission's request, also evoke that spirit of cooperation. The joint visit to Colombia, undertaken with the Special Rapporteur on torture, as well as a joint mission to Nigeria, scheduled for 1996, with the Special Rapporteur on the independence of judges and lawyers, 19/ are other examples.

129. During his years in office, the Special Rapporteur has participated actively in efforts to increase coordination between different United Nations procedures. Thus, he has sought the cooperation of United Nations human rights monitoring missions based in certain countries, by sending to them copies of allegations he has transmitted to the respective Governments with a request for comments and observations. A letter in this regard was sent to the United Nations Observer Mission in Liberia (UNOMIL) and to the United Nations Operation in Somalia (UNOSOM).

130. The exchange of information regarding cases of common interest with treaty bodies, particularly the Committee on the Rights of the Child and the Human

Rights Committee, as well as with the United Nations High Commissioner for Refugees, is a further example of cooperation. In addition, recent annual meetings of special rapporteurs, special representatives, experts and chairpersons of working groups of the Commission on Human Rights have offered the various mechanisms of the Commission the opportunity to discuss matters of common interest and concern.

131. Efforts at coordination with the United Nations Crime Prevention and Criminal Justice Branch at Vienna culminated in the Special Rapporteur's participation in the fifth session of the Commission on Crime Prevention and Criminal Justice, held at Vienna from 21 to 31 May 1996.

132. As to coordination with the United Nations High Commissioner for Human Rights, the Special Rapporteur has had consultations regarding the former's visits to Indonesia and Colombia and the situation in Nigeria. In 1995, the Special Rapporteur drew the High Commissioner's attention to the serious situation in Burundi, and suggested that measures be taken to avoid further eruptions of violence. Coordination should also be strengthened regarding visits, in order to avoid any duplication of efforts. Furthermore, Special Rapporteurs should be involved in consultations before setting up United Nations High Commissioner for Human Rights field offices in countries of common concern. Such field offices are aimed at strengthening human rights mechanisms and should therefore include in their mandates the servicing of Special Rapporteurs.

133. The Special Rapporteur considers that there is a need for the High Commissioner to establish stronger links with other United Nations bodies and agencies dealing with human rights to improve coordination within the United Nations system.

VII. CONCLUDING REMARKS AND RECOMMENDATIONS

134. The Special Rapporteur is constrained to conclude that there is no indication that the number of violations of the right to life has decreased. The transmission of 818 urgent appeals and more than 6,500 cases of alleged violations of the right to life, as well as 131 follow-up communications to more than 80 countries during the period under review, offers an insight as to the magnitude of the occurrence of extrajudicial, summary or arbitrary executions worldwide.

135. One of the most prevalent targets of extrajudicial, summary or arbitrary executions continues to be persons involved in struggles, such as those to secure rights to land or to prevent or combat racial, ethnic or religious discrimination and ensure respect for social, cultural, economic, civil and political rights. Women, children, the elderly and the sick have not been spared. Even persons forced into exile and those who are internally displaced are not exempted.

136. Extrajudicial, summary or arbitrary executions, as a phenomenon, tends to be aggravated by a combination of many factors:

First, the inability of certain States to face social problems, particularly those linked to rapid urbanization and a growth in poverty, has provoked an increase in the application of the death penalty, especially with respect to the poor and members of minority groups. The Special Rapporteur wishes to emphasize that the right to life is the most fundamental of human rights. The imposition of capital punishment by States in contravention of the highest fair trial standards, proves the little value accorded by the State to human life and to the respect of human rights.

Secondly, the centrifugal forces at play on the international scene since the end of the cold war have, in some instances, placed peoples' identity at the centre of struggles aiming at the creation of States confined within the interest parameters of a single ethnicity, religion or nationality. This has often led to situations of unrest or civil war.

Thirdly, the absence of control in arms trafficking and the facility with which one can obtain funds through contraband and drug trafficking have facilitated the emergence of guerrillas and have rendered their activities economically profitable. Caught between government and guerrilla forces, left to fend for themselves, some populations are abandoned by both their Governments and the international community.

Lastly, the collapse of the judiciary in many States, which is often linked to the lack of a political will to render justice, has led to impunity and/or to a selective application of justice that results in a cycle of repression and vengeance. Once in place, this cycle leads populations into a situation of insecurity and aggravates their already precarious living conditions.

137. The Special Rapporteur acknowledges with regret his powerlessness in the face of the above-mentioned situations. The effectiveness of the Special Rapporteur's mandate is further hampered by the various impediments which are built into the United Nations framework. The Special Rapporteur is called upon to act on information transmitted to him, but the human resources at his disposal are increasingly disproportionate with respect to the large number of requests placed before him. This aspect of the problem is particularly regrettable in the light of the expectations created by a projection that United Nations mechanisms are equipped to provide protection to individuals and communities. In addition, there is no formal mechanism within the United Nations human rights structure to follow up on recommendations made by its experts. Furthermore, the capacity of the United Nations to prevent human rights crises, including genocide, is questionable.

138. Consequently, the Special Rapporteur urges the international community to assist in the establishment of a coherent multifaceted system of prevention of conflicts that would embody a rapid intervention component to avert the degeneration of situations where the threat of massive human rights violations exists. Such a system would involve the participation not only of United Nations organs but would also require the concerted effort of non-governmental organizations.

139. In this regard, the Special Rapporteur deplores the fact that the Convention on the Prevention and Punishment of the Crime of Genocide, which

treats not only the repression but also the prevention of genocide, has not gained the attention it deserves from the international community. This situation is particularly lamentable in the light of the fact that several States parties to the Convention are in possession of the financial and technical means to enable them to establish a system of rapid alert in regions where political situations are identified as being volatile.

140. Once human rights and humanitarian violations have been committed on a massive scale, there is no universal mechanism for the identification and prosecution of persons suspected to have instigated or participated in the commission of those crimes. Moreover, there is no permanent international judicial body that could ensure that the alleged perpetrators will be brought to justice, even where both the political will and a functioning judiciary are absent at the national level. In other words, the idea of a global village does not extend to the rule of law.

141. The Special Rapporteur considers that extrajudicial, summary or arbitrary executions can be prevented only if there is a genuine will on the part of Governments to enforce the safeguards and guarantees for the protection of the right to life of every person. Declarations of commitment to protection of the right to life by Governments are only effective if they are translated into practice. If the aim is protection of the right to life, the emphasis must be on prevention of violations of this fundamental right and their consequences, which are often irreparable.

Recommendations

142. The international community should concentrate its efforts on the effective prevention of further human rights crises, and on the implementation of existing standards for the protection of the right to life.

1. Capital punishment

143. States that have not ratified the International Covenant on Civil and Political Rights and, in particular, its Second Optional Protocol, are encouraged to do so. All States should bring their domestic legislation into conformity with international standards. States that enforce their capital punishment legislation should observe all fair trial standards contained in the relevant international legal instruments, in particular the International Covenant on Civil and Political Rights. In addition, Governments that continue to enforce such legislation with respect to minors and the mentally ill are particularly called upon to bring their domestic criminal laws into conformity with international legal standards.

144. States should provide in their national legislation a period of at least six months so as to allow a reasonable amount of time for the preparation of appeals to courts of higher jurisdiction and petitions for clemency before a death sentence imposed by a court of first instance is executed. Such a measure would prevent hasty executions while affording defendants the opportunity to exercise their rights to appeal. Officials responsible for carrying out an

execution order should be fully informed of the state of appeals and petitions for clemency of the prisoner in question, and should not proceed to an execution if an appeal or other recourse procedure is still pending.

145. An immutable fact remains that the loss of life is irreversible and judicial error irreparable. A wide range of experts in sciences such as criminology, sociology and psychology have expressed doubts concerning the deterrent effect of capital punishment. Therefore, Governments of countries in which the death penalty is still enforced are urged to deploy every effort that could lead to its abolition. The Special Rapporteur requests the General Assembly to adopt a resolution calling for the abolition of the death penalty.

2. Death threats

146. State authorities should conduct investigations with respect to all instances of death threats or attempts against lives that are brought to their attention, regardless of whether a judicial or other procedure has been activated by the potential victim. Governments should adopt effective measures to ensure full protection of those who are at risk of extrajudicial, summary or arbitrary execution.

147. In circumstances where certain state authorities or sectors of the civil society perceive political dissent, social protest or the defence of human rights as a threat to their authority, the central government authorities should take action to create a climate more favourable to the exercise of those rights and thus reduce the risk of violations of the right to life.

3. Death in custody

148. All Governments should ensure that conditions of detention in their countries conform to the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments. Governments should also deploy efforts to ensure full respect for international norms and principles prohibiting any form of cruel, inhuman or degrading treatment.

149. Prison guards and other law enforcement personnel should receive training on the observance of the aforementioned norms in performing their duties. Violations of the right to life committed by these state agents in the course of controlling prison disturbances and preventing prison escapes would be curbed if the agents took into consideration the rights of prisoners. All deaths in custody should be investigated by a body that is independent from the police or the prison authorities.

150. Because of the magnitude of the problem, the Special Rapporteur requests the General Assembly to call on the Commission on Human Rights to appoint a Special Rapporteur on prison conditions.

4. Excessive use of force by law enforcement officials

151. All Governments should ensure that their security personnel receive thorough training in human rights issues, particularly with regard to restrictions on the use of force and firearms in the discharge of their duties. Such training should include, for instance, the teaching of methods of crowd control without resorting to lethal force. Every effort should be made by States to combat impunity in this field.

5. Violations of the right to life during armed conflict

152. All States that have not yet done so are encouraged to ratify the four Geneva Conventions and two Additional Protocols. The training of members of the armed forces and other security forces should include substantive instruction on the content of these instruments in addition to the ones dealing with human rights.

153. Governments of countries in which terrorist groups are active should ensure that counter-insurgency operations are conducted in conformity with human rights standards so as to minimize the loss of lives.

6. Genocide

154. All Governments are encouraged to ratify the Convention on the Prevention and Punishment of the Crime of Genocide. The Special Rapporteur calls on States to pay due attention to the stipulations in the Convention concerning the prevention of genocide. Concerned States, assisted by the international community, should take all necessary measures to prevent acts of communal violence from degenerating into large-scale killings that may reach the dimension of genocide. States in which acts of communal violence occur should do their utmost to curb such conflicts at an early stage, and to work towards reconciliation and peaceful coexistence of all segments of the population, regardless of ethnic origin, religion, language or any other distinction. Governments should at all times refrain from any propaganda or incitement to hatred and intolerance that might foment acts of communal violence or condone such acts.

155. The Special Rapporteur, pursuant to article 8 of the Convention on the Prevention and Punishment of the Crime of Genocide, encourages States parties to the Convention to call upon the competent organs of the United Nations to take action in order to prevent and suppress acts of genocide.

156. The Special Rapporteur calls on the General Assembly and/or the Commission on Human Rights to consider establishing a monitoring mechanism to supervise the application of the Convention on the Prevention and Punishment of the Crime of Genocide.

7. Imminent expulsion of persons to countries where their lives are in danger

157. Governments that have not yet ratified the Convention and the Protocol Relating to the Status of Refugees are called upon to do so. All Governments should at all times refrain from expelling a person in circumstances where respect for his or her right to life is not fully guaranteed. Refoulement of refugees or displacement of internally displaced persons to countries or areas where respect for their right to life is not fully guaranteed, as well as the closure of borders preventing the escape of persons trying to flee a country, should at all times be prohibited. Whenever a country is faced with a massive influx of refugees the international community should provide necessary assistance.

8. Impunity

158. All States should conduct exhaustive and impartial investigations into allegations of violations of the right to life, in all of its manifestations, and identify those responsible. They should also prosecute the alleged perpetrators of such acts, while taking effective measures to avoid the recurrence of such violations. To this effect, blanket amnesty laws prohibiting the prosecution of alleged perpetrators and violating the rights of the victims should not be endorsed.

159. The Special Rapporteur believes that the following measures could be taken to combat the problem of impunity: (a) establishment of a permanent international criminal court, with universal jurisdiction over mass violations of human rights and humanitarian law; such an international criminal court would have to be bestowed with an adequate mandate and sufficient means to enable it to conduct thorough investigations and enforce the implementation of its decisions; and (b) adoption of a convention, similar to the Convention against Torture, which would provide domestic courts with international jurisdiction over persons suspected of having committed mass violations of the right to life; such a convention should also contain provisions for the allocation of a voluntary fund for victims.

160. The Special Rapporteur welcomes the developments and discussions on the draft code on crimes against the peace and security of mankind and the draft statute on the establishment of an international criminal court and encourages the General Assembly to adopt them as soon as possible.

9. Rights of victims

161. All States should include in their national legislation provisions that allow for adequate compensation and facilitate access to judicial remedies to victims and the families of victims of violations of the right to life. States should endorse the principles set out in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985, and incorporate them in their national legislation.

Notes

1/ E/CN.4/1992/30 and Corr.1.

2/ See E/CN.4/1993/46, chap. II.

3/ Until 1 September 1996.

4/ See the annex to the present report for the list of questions to which Governments are requested to reply.

5/ See, also, E/CN.4/1996/16/Add.1, para. 50.

6/ See E/CN.4/1997/6/Add.1.

7/ E/CN.4/1996/52.

8/ E/CN.4/1996/4/Add.1.

9/ Security Council resolutions 808 (1993) of 22 February 1993 and 955 (1994) of 8 November 1994 on the establishment of international criminal jurisdictions of the former Yugoslavia and Rwanda, respectively, excluded the death penalty, establishing that imprisonment was the sole penalty to be imposed by these tribunals for crimes as abominable as genocide and crimes against humanity.

10/ The Human Rights Committee, in its comments on article 6 of the Covenant on Civil and Political Rights, observed that this provision also refers generally to abolition in terms which strongly suggest that abolition is desirable (paras. 6(2) and (6)). The Committee concluded that all measures of abolition should be considered as progress in the enjoyment of the right to life.

11/ General Assembly resolutions 2393 (XXIII), 2857 (XXVI) and 39/118.

12/ E/1995/78 and Add.1 and Add.1/Corr.1.

13/ Fifth Survey on Capital Punishment and on the Implementation of Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty, 1995.

14/ Articles 10 and 11 of the Universal Declaration on Human Rights, articles 9, 14 and 15 of the International Covenant on Civil and Political Rights, the safeguards guaranteeing protection for all those facing the death penalty, as well as Economic and Social Council resolution 1989/65.

15/ See Economic and Social Council resolution 1989/64, para. 5.

16/ Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the safeguards guaranteeing protection of the rights of those facing the death penalty.

17/ See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65, annex), which set forth in detail the above-mentioned obligations, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

18/ See principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which states, in part, "In no circumstances ... shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, summary or arbitrary executions".

19/ At the time of finalizing the present report, no answer had been received from the Nigerian authorities regarding the mission.

Appendix

QUESTIONS TO WHICH GOVERNMENTS ARE REQUESTED TO REPLY IN REGARD TO ALLEGED CASES OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

1. What is the cause of death as indicated in the death certificate?

2. Was an autopsy conducted? If so, by whom? What are the results of the autopsy? (Please provide a copy of the complete autopsy report.)

3. Has a complaint, formal or informal, been made on behalf of the victim? If so, who made the complaint and what is their relation to the victim? To whom was the complaint made? What action was undertaken upon receipt of the complaint and by whom?

4. Which is the authority responsible for investigating the allegations? Which is the authority responsible for prosecuting the perpetrators?

5. Are any inquiries, judicial or other procedures in connection with the case under way? If so, please provide details of their progress to date, and the timetable envisaged for their conclusion. If such inquiries or procedures have been completed, please provide details of the conclusions reached. (Please attach copies of any relevant documents.) Are these conclusions definitive?

6. Has the person alleged to have carried out the extrajudicial, summary or arbitrary execution been identified? To which unit or branch of the police, security forces, armed forces or groups cooperating with them does he/she belong?

7. Have penal or disciplinary sanctions been imposed on the alleged perpetrators? If so, please provide details of the procedures followed to ascertain the penal or disciplinary responsibility of the perpetrators before imposing such penalties. If no such sanctions have been imposed, why not?

8. If no inquiries have been undertaken, why not? If the inquiries which were undertaken were inconclusive, why so?

9. Has any compensation been provided to the family of the victim? If so, please provide details, including the type and the amount of the compensation involved. If no compensation has been provided, why not?

10. Please provide such other information or observations concerning the present case as you consider relevant.